



House of Representatives

General Assembly

File No. 435

January Session, 2007

Substitute House Bill No. 7343

House of Representatives, April 10, 2007

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING RIPARIAN PROTECTION AREAS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-38 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 As used in sections 22a-36 to 22a-45a, inclusive:

4 (1) "Commissioner" means the Commissioner of Environmental
5 Protection;

6 (2) "Person" means any person, firm, partnership, association,
7 corporation, limited liability company, company, organization or legal
8 entity of any kind, including municipal corporations, governmental
9 agencies or subdivisions thereof;

10 (3) "Municipality" means any town, consolidated town and city,
11 consolidated town and borough, city and borough;

12 (4) "Inland wetlands agency" means a municipal board or

13 commission established pursuant to and acting under section 22a-42;

14 (5) "Soil scientist" means an individual duly qualified in accordance
15 with standards set by the federal Office of Personnel Management;

16 (6) "Material" means any substance, solid or liquid, organic or
17 inorganic, including, but not limited to soil, sediment, aggregate, land,
18 gravel, clay, bog, mud, debris, sand, refuse or waste;

19 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or
20 radioactive, which may pollute or tend to pollute any of the waters of
21 the state;

22 (8) "Pollution" means harmful thermal effect or the contamination or
23 rendering unclean or impure of any waters of the state by reason of
24 any waste or other materials discharged or deposited therein by any
25 public or private sewer or otherwise so as directly or indirectly to
26 come in contact with any waters;

27 (9) "Rendering unclean or impure" means any alteration of the
28 physical, chemical or biological properties of any of the waters of the
29 state, including, but not limited to change in odor, color, turbidity or
30 taste;

31 (10) "Discharge" means the emission of any water, substance or
32 material into waters of the state whether or not such substance causes
33 pollution;

34 (11) "Remove" includes, but shall not be limited to drain, excavate,
35 mine, dig, dredge, suck, bulldoze, dragline or blast;

36 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,
37 place, discharge or emit;

38 (13) "Regulated activity" means any operation within or use of a
39 wetland, [or] watercourse or riparian protection area involving
40 removal or deposition of material, or any obstruction, construction,
41 alteration or pollution, of such [wetlands or watercourses] wetland,

42 watercourse or riparian protection area, but shall not include the
43 specified activities in section 22a-40;

44 (14) "License" means the whole or any part of any permit, certificate
45 of approval or similar form of permission which may be required of
46 any person by the provisions of sections 22a-36 to 22a-45a, inclusive;

47 (15) "Wetlands" means land, including submerged land, not
48 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
49 consists of any of the soil types designated as poorly drained, very
50 poorly drained, alluvial, and floodplain by the National Cooperative
51 Soils Survey, as may be amended from time to time, of the Natural
52 Resources Conservation Service of the United States Department of
53 Agriculture;

54 (16) "Watercourses" means rivers, streams, brooks, waterways,
55 lakes, ponds, marshes, swamps, bogs and all other bodies of water,
56 natural or artificial, vernal or intermittent, public or private, which are
57 contained within, flow through or border upon this state or any
58 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,
59 inclusive. Intermittent watercourses shall be delineated by a defined
60 permanent channel and bank and the occurrence of two or more of the
61 following characteristics: (A) Evidence of scour or deposits of recent
62 alluvium or detritus, (B) the presence of standing or flowing water for
63 a duration longer than a particular storm incident, and (C) the
64 presence of hydrophytic vegetation;

65 (17) "Feasible" means able to be constructed or implemented
66 consistent with sound engineering principles;

67 (18) "Prudent" means economically and otherwise reasonable in
68 light of the social benefits to be derived from the proposed regulated
69 activity provided cost may be considered in deciding what is prudent
70 and further provided a mere showing of expense will not necessarily
71 mean an alternative is imprudent;

72 (19) "Riparian protection area" means an area of land beginning at

73 the boundary of a perennial or intermittent river, stream or brook
74 designated by the commissioner as a Class A or AA surface water
75 pursuant to section 22a-426 and ending at a parallel line located one
76 hundred feet from such river, stream or brook, measured horizontally
77 from such boundary.

78 Sec. 2. Section 22a-41 of the general statutes is repealed and the
79 following is substituted in lieu thereof (*Effective from passage*):

80 (a) In carrying out the purposes and policies of sections 22a-36 to
81 22a-45a, inclusive, as amended by this act, including matters relating to
82 regulating, licensing and enforcing of the provisions thereof, the
83 commissioner shall take into consideration all relevant facts and
84 circumstances, including but not limited to:

85 (1) The environmental impact of the proposed regulated activity on
86 wetlands, [or] watercourses or riparian protection areas;

87 (2) The applicant's purpose for, and any feasible and prudent
88 alternatives to, the proposed regulated activity which alternatives
89 would cause less or no environmental impact to wetlands, [or]
90 watercourses or riparian protection areas;

91 (3) The relationship between the short-term and long-term impacts
92 of the proposed regulated activity on wetlands or watercourses and
93 the maintenance and enhancement of long-term productivity of such
94 wetlands, [or] watercourses or riparian protection areas;

95 (4) Irreversible and irretrievable loss of wetland or watercourse or
96 riparian protection area resources which would be caused by the
97 proposed regulated activity, including the extent to which such
98 activity would foreclose a future ability to protect, enhance or restore
99 such resources, and any mitigation measures which may be considered
100 as a condition of issuing a permit for such activity including, but not
101 limited to, measures to (A) prevent or minimize pollution or other
102 environmental damage, (B) maintain or enhance existing
103 environmental quality, or (C) in the following order of priority:

104 Restore, enhance and create productive wetland, [or] watercourse
105 [resources] or riparian protection areas;

106 (5) The character and degree of injury to, or interference with,
107 safety, health or the reasonable use of property which is caused or
108 threatened by the proposed regulated activity; and

109 (6) Impacts of the proposed regulated activity on wetlands, [or]
110 watercourses or riparian protection areas outside the area for which
111 the activity is proposed and future activities associated with, or
112 reasonably related to, the proposed regulated activity which are made
113 inevitable by the proposed regulated activity and which may have an
114 impact on wetlands, [or] watercourses or riparian protection areas.

115 (b) (1) In the case of an application which received a public hearing
116 pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the
117 inland wetlands agency that the proposed activity may have a
118 significant impact on wetlands, [or] watercourses or riparian
119 protection areas, a permit shall not be issued unless the commissioner
120 finds on the basis of the record that a feasible and prudent alternative
121 does not exist. In making his finding, the commissioner shall consider
122 the facts and circumstances set forth in subsection (a) of this section.
123 The finding and the reasons therefor shall be stated on the record in
124 writing.

125 (2) In the case of an application which is denied on the basis of a
126 finding that there may be feasible and prudent alternatives to the
127 proposed regulated activity which have less adverse impact on
128 wetlands, [or] watercourses or riparian protection areas, the
129 commissioner or the inland wetlands agency, as the case may be, shall
130 propose on the record in writing the types of alternatives which the
131 applicant may investigate provided this subdivision shall not be
132 construed to shift the burden from the applicant to prove that he is
133 entitled to the permit or to present alternatives to the proposed
134 regulated activity.

135 (c) For purposes of this section, (1) ["wetlands or watercourses"]

136 "wetlands", "watercourses" and "riparian protection areas" includes
137 aquatic, plant or animal life and habitats in wetlands, [or] watercourses
138 or riparian protection areas, and (2) "habitats" means areas or
139 environments in which an organism or biological population normally
140 lives or occurs.

141 (d) A municipal inland wetlands agency shall not deny or condition
142 an application for a regulated activity in an area outside wetlands, [or]
143 watercourses or riparian protection areas on the basis of an impact or
144 effect on aquatic, plant, or animal life unless such activity will likely
145 impact or affect the physical characteristics of such wetlands, [or]
146 watercourses or riparian protection areas.

147 Sec. 3. Section 22a-42a of the general statutes is repealed and the
148 following is substituted in lieu thereof (*Effective from passage*):

149 (a) The inland wetlands agencies authorized in section 22a-42 shall
150 through regulation provide for (1) the manner in which the boundaries
151 of inland wetland and watercourse areas in their respective
152 municipalities shall be established and amended or changed, (2) the
153 form for an application to conduct regulated activities, (3) notice and
154 publication requirements, (4) criteria and procedures for the review of
155 applications, and (5) administration and enforcement.

156 (b) No regulations of an inland wetlands agency including
157 boundaries of inland wetland and watercourse areas shall become
158 effective or be established until after a public hearing in relation
159 thereto is held by the inland wetlands agency. Any such hearing shall
160 be held in accordance with the provisions of section 8-7d. A copy of
161 such proposed regulation or boundary shall be filed in the office of the
162 town, city or borough clerk as the case may be, in such municipality,
163 for public inspection at least ten days before such hearing, and may be
164 published in full in such paper. A copy of the notice and the proposed
165 regulations or amendments thereto, except determinations of
166 boundaries, shall be provided to the commissioner at least thirty-five
167 days before such hearing. Such regulations and inland wetland and
168 watercourse boundaries may be from time to time amended, changed

169 or repealed, by majority vote of the inland wetlands agency, after a
170 public hearing in relation thereto is held by the inland wetlands
171 agency, in accordance with the provisions of section 8-7d. Regulations
172 or boundaries or changes therein shall become effective at such time as
173 is fixed by the inland wetlands agency, provided a copy of such
174 regulation, boundary or change shall be filed in the office of the town,
175 city or borough clerk, as the case may be. Whenever an inland
176 wetlands agency makes a change in regulations or boundaries it shall
177 state upon its records the reason why the change was made and shall
178 provide a copy of such regulation, boundary or change to the
179 Commissioner of Environmental Protection no later than ten days after
180 its adoption provided failure to submit such regulation, boundary or
181 change shall not impair the validity of such regulation, boundary or
182 change. All petitions submitted in writing and in a form prescribed by
183 the inland wetlands agency, requesting a change in the regulations or
184 the boundaries of an inland wetland and watercourse area shall be
185 considered at a public hearing held in accordance with the provisions
186 of section 8-7d. The failure of the inland wetlands agency to act within
187 any time period specified in this subsection, or any extension thereof,
188 shall not be deemed to constitute approval of the petition.

189 (c) (1) On and after the effective date of the municipal regulations
190 promulgated pursuant to subsection (b) of this section, no regulated
191 activity shall be conducted upon any inland wetland, [or] watercourse
192 or within any riparian protection area without a permit. Any person
193 proposing to conduct or cause to be conducted a regulated activity
194 upon an inland wetland or watercourse or within a riparian protection
195 area shall file an application with the inland wetlands agency of the
196 town or towns wherein the wetland, [or] watercourse or riparian
197 protection area in question is located. The application shall be in such
198 form and contain such information as the inland wetlands agency may
199 prescribe. The date of receipt of an application shall be determined in
200 accordance with the provisions of subsection (c) of section 8-7d. The
201 inland wetlands agency shall not hold a public hearing on such
202 application unless the inland wetlands agency determines that the
203 proposed activity may have a significant impact on wetlands, [or]

204 watercourses or riparian protection areas, a petition signed by at least
205 twenty-five persons who are eighteen years of age or older and who
206 reside in the municipality in which the regulated activity is proposed,
207 requesting a hearing is filed with the agency not later than fourteen
208 days after the date of receipt of such application, or the agency finds
209 that a public hearing regarding such application would be in the
210 public interest. An inland wetlands agency may issue a permit without
211 a public hearing provided no petition provided for in this subsection is
212 filed with the agency on or before the fourteenth day after the date of
213 receipt of the application. Such hearing shall be held in accordance
214 with the provisions of section 8-7d. If the inland wetlands agency, or
215 its agent, fails to act on any application within thirty-five days after the
216 completion of a public hearing or in the absence of a public hearing
217 within sixty-five days from the date of receipt of the application, or
218 within any extension of any such period as provided in section 8-7d,
219 the applicant may file such application with the Commissioner of
220 Environmental Protection who shall review and act on such
221 application in accordance with this section. Any costs incurred by the
222 commissioner in reviewing such application for such inland wetlands
223 agency shall be paid by the municipality that established or authorized
224 the agency. Any fees that would have been paid to such municipality if
225 such application had not been filed with the commissioner shall be
226 paid to the state. The failure of the inland wetlands agency or the
227 commissioner to act within any time period specified in this
228 subsection, or any extension thereof, shall not be deemed to constitute
229 approval of the application.

230 (2) An inland wetlands agency may delegate to its duly authorized
231 agent the authority to approve or extend an activity that is not located
232 in a wetland, [or] watercourse or in a riparian protection area when
233 such agent finds that the conduct of such activity would result in no
234 greater than a minimal impact on any wetland, [or] watercourse or
235 riparian protection area, provided such agent has completed the
236 comprehensive training program developed by the commissioner
237 pursuant to section 22a-39. Notwithstanding the provisions for receipt
238 and processing applications prescribed in subdivision (1) of this

239 subsection, such agent may approve or extend such an activity at any
240 time. Any person receiving such approval from such agent shall,
241 within ten days of the date of such approval, publish, at the applicant's
242 expense, notice of the approval in a newspaper having a general
243 circulation in the town wherein the activity is located or will have an
244 effect. Any person may appeal such decision of such agent to the
245 inland wetlands agency within fifteen days after the publication date
246 of the notice and the inland wetlands agency shall consider such
247 appeal at its next regularly scheduled meeting provided such meeting
248 is no earlier than three business days after receipt by such agency or its
249 agent of such appeal. The inland wetlands agency shall, at its
250 discretion, sustain, alter or reject the decision of its agent or require an
251 application for a permit in accordance with subdivision (1) of
252 subsection (c) of this section.

253 (d) (1) In granting, denying or limiting any permit for a regulated
254 activity the inland wetlands agency, or its agent, shall consider the
255 factors set forth in section 22a-41, and such agency, or its agent, shall
256 state upon the record the reason for its decision. In granting a permit
257 the inland wetlands agency, or its agent, may grant the application as
258 filed or grant it upon other terms, conditions, limitations or
259 modifications of the regulated activity which are designed to carry out
260 the policy of sections 22a-36 to 22a-45, inclusive. Such terms may
261 include any reasonable measures which would mitigate the impacts of
262 the regulated activity and which would (A) prevent or minimize
263 pollution or other environmental damage, (B) maintain or enhance
264 existing environmental quality, or (C) in the following order of
265 priority: Restore, enhance and create productive wetland, [or]
266 watercourse or riparian protection area resources. No person shall
267 conduct any regulated activity within an inland wetland, [or]
268 watercourse or in a riparian protection area which requires zoning or
269 subdivision approval without first having obtained a valid certificate
270 of zoning or subdivision approval, special permit, special exception or
271 variance or other documentation establishing that the proposal
272 complies with the zoning or subdivision requirements adopted by the
273 municipality pursuant to chapters 124 to 126, inclusive, or any special

274 act. The agency may suspend or revoke a permit if it finds after giving
275 notice to the permittee of the facts or conduct which warrant the
276 intended action and after a hearing at which the permittee is given an
277 opportunity to show compliance with the requirements for retention of
278 the permit, that the applicant has not complied with the conditions or
279 limitations set forth in the permit or has exceeded the scope of the
280 work as set forth in the application. The applicant shall be notified of
281 the agency's decision by certified mail within fifteen days of the date of
282 the decision and the agency shall cause notice of their order in
283 issuance, denial, revocation or suspension of a permit to be published
284 in a newspaper having a general circulation in the town wherein the
285 wetland or watercourse lies. In any case in which such notice is not
286 published within such fifteen-day period, the applicant may provide
287 for the publication of such notice within ten days thereafter.

288 (2) Any permit issued under this section for the development of
289 property for which an approval is required under section 8-3, 8-25 or 8-
290 26 shall be valid for five years provided the agency may establish a
291 specific time period within which any regulated activity shall be
292 conducted. Any permit issued under this section for any other activity
293 shall be valid for not less than two years and not more than five years.
294 Any such permit shall be renewed upon request of the permit holder
295 unless the agency finds that there has been a substantial change in
296 circumstances which requires a new permit application or an
297 enforcement action has been undertaken with regard to the regulated
298 activity for which the permit was issued provided no permit may be
299 valid for more than ten years.

300 (e) The inland wetlands agency may require a filing fee to be
301 deposited with the agency. The amount of such fee shall be sufficient
302 to cover the reasonable cost of reviewing and acting on applications
303 and petitions, including, but not limited to, the costs of certified
304 mailings, publications of notices and decisions and monitoring
305 compliance with permit conditions or agency orders.

306 (f) If a municipal inland wetlands agency regulates activities within

307 areas around wetlands or watercourses or within riparian protection
308 areas, such regulation shall: (1) [be] Be in accordance with the
309 provisions of the inland wetlands regulations adopted by such agency
310 related to application for, and approval of, activities to be conducted in
311 wetlands or watercourses or within riparian protection areas, and (2)
312 apply only to those activities which are likely to impact or affect
313 wetlands, [or] watercourses or riparian protection areas.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	22a-38
Sec. 2	<i>from passage</i>	22a-41
Sec. 3	<i>from passage</i>	22a-42a

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Department of Transportation	TF - See Below
Department of Environmental Protection	EQ - See Below

Note: TF=Transportation Fund; EQ=Environmental Quality Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Cost	Potential	Potential

Explanation

The bill increases the number of projects that would require permits by adding riparian corridors to the definition of regulated activity.

The Department of Transportation will require three additional staff at a cost of \$180,000 annually in order to process the additional projects requiring permits as a result of this bill. Currently the processing time to obtain permits is between 9 and 12 months. It is anticipated that with the additional projects this will increase the processing time from 9 to 12 months to 16 months.

This could also result in significant costs to the Department of Transportation. The bill may lead to project delays which might interfere with construction start dates and require: (1) renegotiation of contracts or (2) contract amendments and change orders. Since projects are financed with bond funds, any increase in construction costs would result in Transportation Fund (DOT) debt service costs.

Any increase in the Department of Environmental Protection (DEP) permitting workload will be commensurate with whatever additional workload the DOT undertakes, and offset with permit revenues.

Requiring a permit for additional regulated activities concerning riparian protection areas could result in a fiscal impact to various municipal inland wetland agencies. The impact would vary by town and amount of activity and the exact impact is indeterminate at this time.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 7343*****AN ACT CONCERNING RIPARIAN PROTECTION AREAS.*****SUMMARY:**

The bill expands the scope of the inland water and watercourse law by including riparian protection areas. Thus, it requires a permit for regulated activities to take place on these areas.

The bill defines “riparian protection area” as land that begins at the boundary of a perennial or intermittent river, stream, or brook that the Department of Environmental Protection (DEP) commissioner designates as a Class A or AA surface water as defined by law and ending at a parallel line located 100 feet from the river, stream, or brook, measured from the boundary.

By law, DEP and local Inland Wetland Agencies have oversight of regulated activities on wetlands and watercourses. A regulated activity is use of or any operation within a wetland or watercourse that involves (1) material removed from or deposited on it or (2) any obstruction, construction, alteration, or pollution of such areas. But it excludes certain permitted activities that are “as of right.” The bill adds riparian protection areas to this definition.

The bill makes conforming and technical changes.

EFFECTIVE DATE: Upon passage

BACKGROUND***Inland Wetland Agencies***

The law requires towns to create inland wetlands agencies. These agencies must consider specific statutory factors when deciding

whether to approve almost any type of project in wetlands or watercourse areas.

Perennial and Intermittent Water Bodies

A perennial water body contains water throughout the year, except during periods of severe drought.

The term "intermittent" means that a body of water contains water only part of the year. Natural factors such as variations in snowmelt, or human control for industrial or irrigation purposes, can affect water level and flow.

DEP Inland Surface Water Classifications - Class AA and A

Class AA water consists of an existing or proposed drinking water supply, fish and wildlife habitat, recreational use (may be restricted), and agricultural and industrial supply. Discharges into it are restricted to those from public or private drinking water treatment systems, dredging and dewatering projects, and emergency and clean water.

Class A areas are for potential drinking water supply, fish and wildlife habitat, recreational use, agricultural and industrial supply, and other legitimate uses including navigation. Discharges are restricted in the same way as Class AA water.

“As of Right” Activities in Wetland and Watercourse Areas

Regulated activities do not include “as of right” operations and uses. These include:

1. certain agricultural uses;
2. uses incidental to the enjoyment and maintenance of residential property, such as landscaping that does not remove or deposit significant amounts of material from or into the wetland or watercourse, or divert or alter a watercourse; and
3. the construction of a residential home under very limited circumstances.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 25 Nay 5 (03/23/2007)